SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 513

THE UNITED STATES OF AMERICA, APPELLANT

vs.

AMERICAN LIVESTOCK COMMISSION COMPANY; LEWIS BAREFOOT, TRADING AND DOING BUSINESS AS THE BAREFOOT COMMISSION COMPANY; CASSIDY SOUTHWESTERN COMMISSION COMPANY ET AL., ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

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Citation in usual form showing service on Hall & Thompson and Fred E. Suits, filed September 24, 1928, omitted in printing.

4 In United States District Court Western District of Oklahoma

Notice of appeal

Filed September 24, 1928

The plaintiffs in the above entiled case are hereby notified that the defendants appeal from the decision of the court as rendered on the 28th day of July, 1928. Said appeal will be to the Supreme Court of the United States, in accordance with the citation as issued in this case on the 24th day of September, 1928.

ROY ST. LEWIS,
Counsel for Defendant.

Service of the above Notice of Appeal accepted this 24th day of September, 1928.

HALL & THOMPSON,
FRED E. SUITS,
Counsel for American Livestock Commission Company, et al.

[File indorsement omitted.]

3 In United States district court

In Equity No. 794

AMERICAN LIVESTOCK COMMISSION COMPANY AND OTHERS, PLAINTIFFS,

vs.

UNITED STATES, DEFENDANT

Bill of complaint

Filed April 14, 1926

To the honorable JOHN H. COTTERAL,
Judge of the United States District Court for the Western District of the State of Oklahoma:

Come now your plaintiffs, American Livestock Commission Company, a corporation; Lewis Barefoot, trading and doing business as the Barefoot Commission Company; Cassidy Southwestern Commission Company, a corporation; Chas. Fuson, trading and doing business as the Fuson Commission Company; E. T. Healy, E. J. Healy, jr., trading and doing business as Healy & Company; R. M. Johnson, Wm. H. Laux, and T. A. Campbell, a copartnership doing business under the firm name of Johnson-Laux-Campbell Live Stock Commission Company; Liberty Live Stock Commission Company, a cor-

poration; Claude Allen, trading and doing business as the Midwest Live Stock Commission Company; Oklahoma Live Stock Commission Company, a corporation; Scannell-Slitt Commission Company, a corporation; and the Stribling Commission Company, a copartnership composed of J. W. Stribling and J. B. Stribling; each of whom is a market agency, duly registered as such with the Secretary
6 of Agriculture under the packers and stockyards act of 1921; and Ralph Sullivant, C. J. McFarland, J. E. Cash, W. J. Goodson, W. H. May, O. J. Jones, Ben Kapp, and Jean Pryor, each of whom is duly registered with the Secretary of Agriculture as a dealer at the Oklahoma National Stock Yards, Oklahoma City, Oklahoma, under the packers and stockyards act of 1921, and individually and collectively show to the court:

I

That the plaintiffs herein designated as market agencies are corporations, partnerships and individuals, respectively, as severally stated, that they have the offices or places of business, respectively, at Oklahoma City, in the Western District of the State of Oklahoma; that said corporations and many of the individuals and partners comprising the plaintiffs designated as market agencies are residents and citizens of the State of Oklahoma; that said market agencies and each of them are individually engaged in business competition, one with the other, as agents and brokers for others in the buying and selling of livestock on commission at the Oklahoma National Stockyards at Oklahoma City, in the State of Oklahoma.

That the plaintiffs hereinbefore designated as dealers are residents of Oklahoma City, in the State of Oklahoma; that each, with the exception of the plaintiff, Jean Pryor, is, and was at all the times hereinafter mentioned, engaged in the business of buying and selling livestock at the Oklahoma National Stockyards at said city of Oklahoma City; that the said Jean Pryor was at the times
7 hereinafter stated engaged in business as such dealer at the said stockyards.

II

Plaintiffs further state that they, and each of them, individually and severally, bring this bill for and on behalf of themselves, individually and severally.

III

Plaintiffs further allege that the defendant is the United States of America, and is made the party defendant herein as provided by law in such cases, and for the reason that in its name it is administering, through the Secretary of Agriculture, the provisions of the act of Congress known as the packers and stockyards act of 1921 and the amendments thereto.

IV

Plaintiffs further show to the court that heretofore they were made respondents in a certain complaint and proceeding issued and instituted by the Secretary of Agriculture of the United States, and pending before the said Secretary of Agriculture, entitled "In re American Livestock Commission Company, and others," and known as "Docket Number 136." A copy of the said complaint is hereto attached, marked "Exhibit A," and made a part hereof.

That thereafter the plaintiffs filed their response to the said complaint of the said Secretary of Agriculture, a copy of which is hereto attached, marked "Exhibit B," and made a part hereof.

8 Plaintiffs further show to the court that a formal hearing was had upon the charges in said complaint brought against these plaintiffs and others as respondents; that said hearing was had before the Honorable B. T. Hainer, an examiner for the said Secretary of Agriculture; that at the said hearing testimony, both oral and documentary, was introduced upon the part of the Government of the United States, and upon the part of the plaintiffs herein and others as respondents in the said proceeding.

That thereafter, and on the thirty-first day of March, 1926, the said Secretary of Agriculture, "Upon consideration of the record" of said hearing, issued in said proceeding a certain "Findings of fact, conclusion, and order," a copy of which is hereto attached, marked "Exhibit C," and made a part of this bill in equity.

V

Plaintiffs further show to the court that in said "Findings of fact, conclusion, and order," the said Secretary of Agriculture finds and concludes that these plaintiffs

"Individually and in concert engaged in and used unfair and unjustly discriminatory practices and devices in connection with the handling, buying, or selling of live stock in commerce at said stockyards, as defined in Title III, section 312, of said act:

"That the said respondents above named and each of them have in the handling, buying, or selling of live stock in commerce at said stockyards individually and in concert engaged in a course of

9 conduct and done acts for the purpose and with the effect of restraining commerce in violation of said act, in this, to wit: That said above named respondents and each of them while freely dealing and engaging in and carrying on the business of buying or selling live stock in commerce at said stockyards between and among themselves, have persistently refrained and refused from handling, buying, or selling live stock from the Producers Commission Association, a cooperative market agency, and duly registered and qualified to transact business at said stockyards, and said respondents are continuing to and refusing and refraining from handling or buying live stock from said Producers Commission Association in

the usual and ordinary course of business at said stockyards, thereby unjustly and unfairly discriminating against said market agency to their prejudice and disadvantage."

And plaintiffs respectfully show to the court that said finding and conclusion upon the part of the Secretary of Agriculture is arbitrary, oppressive, and unreasonable; that there is no testimony in the entire record of said hearing under said complaint which tends to establish said findings and conclusions of the Secretary of Agriculture in this, to wit:

There is no testimony in the record of said hearing, or introduced at said hearing, which tends to show or upon which said Secretary of Agriculture might lawfully conclude or find that there had been or was any concert of action, conspiracy, or agreement between or among these plaintiffs or any two or more of them to refuse to buy from or sell to said Producers Commission Association.

There is no testimony in the record of said hearing, or introduced at said hearing, which tends to show that said plaintiffs, or either or any of them, had unfairly or unjustly discriminated against the said Producers Commission Association, or which tended to show that the said plaintiff had done acts for the purpose and with the effect of restraining commerce in violation of said packers and stockyards act of 1921.

VI

Plaintiffs further show to the court that in said "Findings of fact and conclusions" said Secretary of Agriculture further found and concluded as follows:

"That the said respondents above named and each of them have, in the handling, buying or selling in commerce at said stockyards individually and in concert engage in a course of conduct and done acts for the purpose and with the effect of restraining commerce, in violation of said act, in this, to wit: That said above named respondents and each of them, while freely dealing and engaging in and carrying on the business of buying and selling live stock in commerce at said stockyards between and among themselves, have persistently refrained and refused from handling, buying or selling live stock from the Bollinger & Spencer Livestock Commission Company, a market agency duly registered and engaged in the business of handling, buying or selling live stock at said stockyards until it ceased to do business on or about March 11, 1925, thereby unfairly discriminating against said market agency to its prejudice and disadvantage."

And your plaintiffs respectfully show to the court that said conclusion and finding is unfair, arbitrary, capricious, and oppressive; that there is no evidence in the entire record of the said hearing which tends to show that these plaintiffs or any two or more of them co-

spired or agreed or concerted to refrain from buying from or selling to the said Bollinger & Spencer Livestock Commission Company; or which tends to show that plaintiffs or any of them engaged in a course of conduct or performed acts for the purpose and with the effect of restraining commerce, in violation of the said act; or which tends to show that said plaintiffs or either of them in any way unfairly discriminated against said Bollinger & Spencer Livestock Commission Company to its prejudice and disadvantage.

VII

Plaintiffs further show to the court that in the said order of the Secretary of Agriculture the said Secretary of Agriculture ordered that the plaintiffs herein

"Cease and desist from engaging in and using any unfair or unjustly discriminatory practices or devices in connection with the buying and selling of live stock in commerce as defined in said packers and stockyards act at the Oklahoma National Stock-
12 yards, to the prejudice and disadvantage of the Producers Commission Association and of the Bollinger & Spencer Livestock Commission Company at the Oklahoma National Stockyards at Oklahoma City, Oklahoma, in violation of Title III of said act (1) by failing or refusing to buy live stock from or sell live stock to said Producers Commission Association and the Bollinger & Spencer Livestock Commission Company in the ordinary course of business or to enter into any business relations with them with respect thereto, while at the same time engaging in and carrying on business freely among themselves; (2) by combining or agreeing among themselves to refrain from buying live stock from or selling live stock to the Producers Commission Association and the Bollinger & Spencer Livestock Commission Association; and (3) in any other manner shown by the record."

Plaintiffs say that under that portion of said order numbered (1) said Secretary of Agriculture seems to order the plaintiffs, acting as individuals and acting individually, to cease and desist from failing and refusing to buy from or sell to the said Producers Commission Association and the said Bollinger & Spencer Livestock Commission Company.

Plaintiffs further respectfully show to the court that, acting as individuals, they have a lawful right to decide for themselves with whom they will or will not transact business, and that said order is unreasonable, arbitrary, illegal and oppressive, and that it is an infringement upon their rights as American citizens, deprives plaintiffs of their legal right of contract, and deprives plaintiffs of their business and property and property rights without due pro-
13 cess of law, in violation of the fifth amendment to the Constitution of the United States.

VIII

Plaintiffs further show to the court that as to that portion of said order of the Secretary of Agriculture numbered (2), there is no testimony in the entire record of said hearing which tends to support said order, or upon which to predicate or base said order; that there is no testimony in the entire record of said proceeding upon which to base a finding or conclusion that said plaintiffs or any two or more of them had acted in concert, collusion, conspiracy or agreement in failing or refusing to buy or sell to either the Producers Commission Association or the Bollinger Spencer Livestock Commission Company; that said Producers Commission Association, as is hereinafter more specifically set forth, has no power or authority to buy livestock from these plaintiffs or from any other source; that said portion of said order numbered (2) is arbitrary, unreasonable, oppressive, unreasonable, illegal, prejudicial to the rights and business of each of these respondents, and deprives these plaintiffs of their business and property and property rights without due process of law, in violation of the fifth amendment to the Constitution of the United States.

IX

Plaintiff further show to the court that that portion of the said order which is numbered (3), wherein the Secretary of Agriculture orders the plaintiffs to cease and desist from "engaging in and using any unfair or unjustly discriminatory practices or devices
14 * * * to the prejudice or disadvantage of the Producers Commission Association and the Bollinger & Spencer Livestock Commission Company * * * (3) in any other manner shown by the record," in unfair, unjust, vague, arbitrary, oppressive, and indefinite; that it does not apprise the plaintiffs of those acts which the Secretary of Agriculture purports to order them to cease and desist doing; that there is no finding of fact upon the part of the Secretary of Agriculture, no evidence in the record, and no allegations in the complaint filed by the Secretary of Agriculture upon which said "order" could be predicated; that same is a denial to these plaintiffs of the rights guaranteed to them as citizens of the United States by the Constitution and laws of the United States, and deprives plaintiffs of their business and property without due process of law, in violation of the fifth amendment to the Constitution of the United States.

X

Plaintiffs further show to the court that said findings, conclusions and order of the Secretary of Agriculture were based and predicated, if upon any evidence at all, upon incompetent, irrevelevant and immaterial and prejudicial testimony introduced at said hearing on said complaint over the objection and exception of the plaintiffs herein.

and each of them, and in violation of the legal and constitutional rights of these plaintiffs and each of them.

XI

Plaintiffs further show to the court that the said complaint of the Secretary of Agriculture alleged, and the evidence at the hearing thereon, conclusively showed that the said Bollinger & Spencer Livestock Commission Company had ceased to do business as a market agency prior to the filing of the said complaint; that the evidence at said hearing upon said complaint conclusively showed that said Bollinger & Spencer Livestock Commission Company had ceased to do business on account of a shortage or deficit in its "Proceeds account"—that is, the account in which is carried the funds belonging to the shippers and live stock owners for which it was agent—and that the business of said Bollinger & Spencer Livestock Commission Company was closed because it was indebted to its shippers in a sum greater than that which it had money or assets to pay, and that said condition was the reason for the cessation of business of the said company; that said evidence showed that the said Bollinger & Spencer Livestock Commission Company was a partnership composed of Charles J. Bollinger and W. C. Spencer, and that prior to the filing of said complaint and prior to the hearing thereon, said company and said partnership had been dissolved by the death of the C. J. Bollinger; and plaintiffs say that for these reasons the said order directing the plaintiffs to cease and desist from so-called unfair and unjustly discriminatory practices and devices against said company as set forth in the said order is arbitrary, unfair, unreasonable, oppressive, and inequitable, and could have no other effect than to prejudice the rights of these plaintiffs, to injure them in their business dealings or attempted business dealings with prospective shippers and buyers at the Oklahoma City Stockyards; and to injure them in their standing in the opinion of the public as reputable business men in their various and several and respective businesses.

XII

Plaintiffs further allege that the evidence in said hearing before the Secretary of Agriculture shows that the said Producers Commission Association is and has been at all times since its organization, an association organized under and by virtue of the provisions of chapter 181, of the session laws of the State of Oklahoma of 1923, approved March 19, 1923. Said chapter is by reference made a part of this bill in equity as fully as if herein set forth.

Plaintiffs further allege that by reason of the provisions of the said statute regulating and prescribing the functions and powers of associations organized thereunder said Producers Commission Associa-

tion could not qualify, and was not and is not a market agency under the terms and provisions of the packers and stockyards act of 1921 and as defined thereby. That for those reasons the said "order" of the Secretary of Agriculture directing these plaintiffs individually or collectively, or in concert, to cease and desist from certain alleged practices as set forth in the said "order" of the Secretary of Agriculture was and is illegal, arbitrary, unreasonable, and beyond the scope of the power or authority conferred upon the said Secretary of Agriculture by virtue of the provisions of the packers and stockyards act of 1921.

17 XIII

Plaintiffs further allege that by the provisions of the said statute under and by virtue of which the said Producers Commission Association has its legal existence, the said Producers Commission Association, at all times since its organization, and at the present time, could sell only the livestock of its members; that it could not sell livestock for any others than the members of said association, and only for them such livestock as its members might own as the producers thereof; that said association had and has no power or authority to buy livestock for itself, or as the agent, either of its members or other persons; that it could only perform the one service of selling livestock produced by its members; that the Secretary of Agriculture has no power to compel said association to buy livestock from these plaintiffs.

Plaintiffs further show to the court that the respective rights and powers and functions of buying and selling livestock as market agencies or dealers, as the respective plaintiffs may happen to be registered and engaged, were unrestricted.

Plaintiffs further state that the success of their various and several respective businesses as market agencies or dealers, as each of the plaintiffs may happen to be engaged, depends in a large measure upon the mutuality of their business dealing with other market agencies and dealers possessing like powers, authority, duties, and functions.

18 Plaintiffs further show to the court that if they are compelled to buy freely from said Producers Commission Association—which association, under the powers conferred upon it by the statute of its creation, can not purchase from these plaintiffs—they will thereby and to that extent be deprived of the opportunity and power to contract and carry on business dealings with those who can contract and carry on business dealings with these plaintiffs, to the great detriment of their several businesses. Plaintiffs allege that such a result and condition would inevitably follow the "order" of the Secretary of Agriculture; that said "order" is therefore unreasonable, arbitrary, oppressive, illegal, and deprives these plaintiffs and each of them of their business and property and property rights in violation of the fifth amendment to the Constitution of the United States.

XIV

Plaintiffs further allege that there is not anywhere in the evidence adduced at the hearing on the complaint filed by the Secretary of Agriculture any competent evidence to substantiate a finding or conclusion that these plaintiffs or any two or more of them conspired or acted in concert in failing or refusing to buy from or sell to the Producers Commission Association or the Bollinger & Spencer Livestock Commission Company; that there is no competent evidence to substantiate the conclusion or finding that the plaintiffs or any two or more of them had concerted or conspired to use any unfair or unjustly discriminatory practice or device in buying or selling or refusing to buy or sell from or to either the said Producers Commission Association or the Bollinger & Spencer Livestock Commission Company, to their or either of their disadvantage or prejudice; that there is no competent evidence to support the said order of the Secretary of Agriculture, and that same is arbitrary, capricious, oppressive, unreasonable, without authority of law, prejudicial to the respective rights of these several plaintiffs, and deprives these plaintiffs and each of them of their business and property without due process of law, in violation of the fifth amendment to the Constitution of the United States.

XV

Plaintiffs further allege that all the powers, authority, and duties of the Secretary of Agriculture with reference to the several businesses of these respective plaintiffs as market agencies and dealers is such as is conferred upon him by the said packers and stockyards act of 1921 and the amendments thereto; that nowhere in said original act, or the amendments thereto, is the power or authority conferred upon the said Secretary of Agriculture to prescribe the persons, firms, or corporations or association with whom these plaintiffs shall transact business, either in the buying or in the sale of livestock; that it is not within the scope of the power or authority of the said Secretary of Agriculture to direct that these plaintiffs, either as individuals or in concert, cease and desist from refusing to buy livestock from or sell livestock to either the Producers Commission Association or the Bollinger & Spencer Livestock Commission Company, or to make any other order which interferes with the free exercise of their right of lawful contract.

And plaintiffs say that for these reasons, as well as for the other reasons assigned in this bill in equity, the said "order" of the Secretary of Agriculture is illegal, arbitrary, oppressive, unreasonable and that it deprives the plaintiffs of their business, property and property rights without due process of law, in violation of the fifth amendment to the Constitution of the United States.

XVI

Plaintiffs further show to the court that by reason of said arbitrary and illegal order, the business of the plaintiffs, with the exception of the plaintiff, Jean Pryor, is being impaired; that said "Findings, conclusion, and order" is a reflection upon the honor, business standing, and integrity of each of the plaintiffs herein; that the business of each of the plaintiffs, for the most part, consists of personal services rendered to the customers and principals of these plaintiffs as agents and brokers, and in the absence of said customers and principals; that the services rendered by these plaintiffs for their customers and principals in the buying and selling of live stock are, as a result of the absolute necessity for expedition in the transaction of business of this character, consummated and rendered through parol or verbal contracts or agreements, which are not in the vast majority of cases enforceable at law, but which depend for their validity upon
21 the integrity and honor of those engaged therein; that the volume of business handled by each of these plaintiffs depends in a great degree upon the reputation of these plaintiffs for honesty and integrity in their business dealings, and the esteem in which they are held by the general public, and specially that portion of the public which is engaged in the production, purchasing, and sale of live stock; that if the said Secretary of Agriculture is not restrained from enforcing the said "order," the business standing and reputation for business integrity of these plaintiffs, the esteem in which they are held, and the confidence which they have heretofore enjoyed will be irreparably injured; that each of the plaintiffs may be illegally subjected to the penal provisions and punishments provided for in said packers and stockyards act of 1921, all of which is illegal, arbitrary, and oppressive, and in violation of the rights guaranteed to these plaintiffs as American citizens under the Constitution and laws of the United States.

XVII

Plaintiffs further allege that the undisputed evidence introduced at said hearing conclusively shows that, as a matter of law, the plaintiffs and each of them had full and legal justification, if any such justification be needed, for failing and refusing, either as individuals or in concert, to buy live stock from or sell live stock to said Producers Commission Association and said Bollinger & Spencer Livestock Commission Company, and the failure of the said Secretary of Agriculture to so hold as a matter of law was arbitrary, illegal, oppressive,
22 inequitable, and in violation of the respective rights of the plaintiffs and each of them under the Constitution and laws of the United States.

XVIII

Plaintiffs further allege that, although the plaintiff, Jean Pryor, was duly registered with the Secretary of Agriculture as a dealer on the Oklahoma National Stockyard at Oklahoma City, Oklahoma, and had at one time been actively engaged on said yards as a dealer in live stock, yet plaintiffs further allege that said Jean Pryor long before the said complaint was filed by the Secretary of Agriculture, and prior to September 8, 1924, the date when, under the allegations of the complaint, the alleged unfair practices began, the said Jean Pryor had ceased operations as such dealer and was not connected in any capacity with any other dealer or market agency at the said stockyards, all of which is conclusively shown by the evidence upon the said complaint; that there was no evidence which tended to any other or different effect.

That said order as to said Jean Pryor for said reason, as well as for the other reasons hereinbefore set out, is arbitrary, unreasonable, illegal, not based upon the evidence, prejudicial to the substantial rights of said plaintiff, and deprives said plaintiff of his business, property, and property rights without due process of law, and in violation of the fifth amendment to the Constitution of the United States.

XIX

Plaintiffs further allege that by reason of each and all of the
23 facts hereinbefore set forth the said order of the Secretary of Agriculture was and is illegal, null, and void; that a failure to observe and obey the said order, as hereinbefore stated, will subject the plaintiffs herein to civil or criminal action under the penal provisions of the said act; that a compliance with the said order would cause irreparable damage and loss to each of the plaintiffs; that the issuance, existence, and continuance in force of said order has caused and will cause irreparable injury and damage to the standing, reputation, business integrity, and business of each of the plaintiffs, as against all of which the plaintiffs have no adequate protection or remedy at law.

Plaintiffs further allege that they have no recourse save in equity, pursuant to the provisions of said packer and stockyards act, to secure an injunction restraining the enforcement of the said order.

Wherefore, being without remedy save in equity, plaintiffs bring this, their bill in equity, and for the reasons hereinbefore stated, plaintiffs and each of them, individually and collectively, pray:

First. That your honor grant unto plaintiffs writs of subpœna in chancery directed to the United States marshal of the District of Columbia commanding him to file a copy of this petition in the office of the Secretary of Agriculture of the United States and in the Department of Justice of the United States and to otherwise duly summon the defendant herein to appear and answer, but not under oath (answer under oath being specifically waived), the allegations

in the foregoing petition, and abide by such order and decree
24 as the court may make in the premises, and

Second. May it please your honor to grant unto your plaintiffs, and each of them, a writ of injunction directed to said defendant restraining it, its officers and agents, from the enforcement of said cease and desist order entered by the Secretary of Agriculture as aforesaid, and

Third. For such other and further relief as plaintiffs may be entitled to in the premises and as to the court may seem meet and proper.

FRED E. SUITS,
C. E. HALL,
Solicitors for Plaintiffs.

[*Duly sworn to by C. E. Hall; jurat omitted in printing.*]

25 *Exhibit A to complaint*

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

PACKERS AND STOCKYARDS ADMINISTRATION

DOCKET NO. 136

IN RE AMERICAN LIVESTOCK COMMISSION COMPANY AND OTHERS, RESPONDENTS

Complaint and notice of hearing under Title III of the packers and stockyards act, 1921, and the amendment thereto

The Secretary of Agriculture, after a preliminary investigation, having reason to believe that the respondents herein have violated and are now violating the packers and stockyards act, 1921, and it appearing that a proceeding under said act in respect thereto would be in the interest of the public, issues this complaint and notice, stating the facts in that respect as hereinafter set forth.

1. That the respondents, American Livestock Commission Company; Lewis Barefoot, trading and doing business as Barefoot Live Stock Commission Company; Cassidy Southwestern Commission Company; Chas. Fuson, trading and doing business as the Fuson Commission Company; E. T. Healy and E. J. Healy, jr., trading and doing business as Healy & Company; Ingram Livestock Commission Company; R. M. Johnson, Wm. H. Laux, and T. A. Campbell, a copartnership, doing business and trading under the firm name of Johnson-Laux-Campbell Livestock Commission Company; Liberty Livestock Commission Company; Claude Allen, trading and doing business as Mid-West Livestock Commission Company; National

Commission Company; Oklahoma Livestock Commission Company; Scannell-Slitt Commission Company; and Stribling Commission Company are market agencies registered as such under the packers and stockyards act, 1921, and doing business as such at the Oklahoma National Stock Yards at Oklahoma City, Oklahoma.

2. That the respondents, H. C. Aldridge, Ed C. Baldridge, T. O. Bivin, J. S. Bogle, Ed Bohling, J. E. Cash, B. B. Clark, John Clark, W. E. Dabbs, C. E. Davis, T. J. Driggers, W. J. Goodson, A. A. Hamilton, Ben Kapp, E. H. Johnson, W. H. Johnston, C. J. Jones, Price L. Kendall, D. V. Lackey, W. T. Lobb, V. Long, Pat Maloy, jr., R. W. Martin, W. H. May, H. J. McCarron, C. J. McFarland, J. F. McGrath, J. W. O'Quinn, A. G. Pannell, T. J. Pannell, G. F. Patterson, Jean Pryor, E. G. Ramsay, H. C. Rice, C. E. Ridley, N. M. Scannell, Hurley Slitt, W. P. Spencer, Alex Steel, Ralph Sullivant, Fred Welter, Gilbert Wright, Kelly L. Wright, H. T. Wright, Ralph O. Wright, and Roger Wright, are dealers registered as such under the packers and stockyards act, 1921, and doing business as such at the Oklahoma National Stock Yards at Oklahoma City, Oklahoma.

3. That the Oklahoma National Stockyards at Oklahoma City, Oklahoma, is a public stockyards market in which live stock of all classes is bought and sold in commerce as defined in said act; and said stockyards has been found by the Secretary of Agriculture to be a "stockyard" as defined in Title III of said act, of which notice has been given the owner thereof and the public, as required by said act; that live stock is shipped and transported to said stockyards from various States for sale at said stockyards and is there sold, and a part of said live stock after purchase at said stockyards is shipped out of Oklahoma either as live stock or as meat or meat food products; that it is essential to maintain and preserve an open competitive market at said stockyards, and any interference or obstruction of the free flow of commerce in connection with the sale of live stock by market agencies and dealers depresses the prices of live stock to the prejudice and disadvantage of the sellers of live stock at said stockyards, which has the effect of restraining interstate commerce.

4. That substantially all the live stock sold in the Oklahoma National Stockyards is consigned by shippers thereof to the market agencies named as respondents in paragraph 1 hereof, and to the Producers Commission Association, a cooperative organization duly registered as a market agency and engaged in business at said stockyards under said act, and was consigned to the Bollinger and Spencer Livestock Commission Company up to March 11, 1925, at which time it ceased to do business as a market agency duly registered under said act. All the market agencies named herein were at the times hereinafter referred to engaged in the business of buying and selling live stock on a commission basis.

5. That on or about the 8th day of September, 1924, and at divers other times, the said respondents have individually and in concert

engaged in and used unfair and unjustly discriminatory practices and devices in connection with the buying and selling of livestock in commerce, as defined in said act, at the Oklahoma National Stockyards; that the said respondents and each of them have in the buying and selling of livestock in commerce individually and in concert engaged in a course of conduct and done acts for the purpose and with the effect of restraining commerce, in violation of said act in this, to wit: That the said respondents and each of them, while freely engaging in and carrying on business in commerce at the Oklahoma National Stockyards, Oklahoma City, Oklahoma, between and among themselves, have refused and refrained from buying livestock from, or selling livestock to, either the Producers Commission Association or to the Bollinger & Spencer Livestock Commission Company, and are continuing to refuse and refrain from buying livestock from or selling livestock to the said Producers Commission Association, and have thereby unjustly and unfairly discriminated against such market agencies to their prejudice and disadvantage.

6. That the foregoing acts were done for the purpose and with the effect of restraining commerce in the buying or selling of livestock at said stockyards and for the purpose of driving out of business the said Producers Commission Association, a cooperative market agency, and the said Bollinger & Spencer Livestock Commission Company, both active competitors of said respondents, and to prevent them from continuing to engage in the business of buying and selling livestock at said stockyards, all of which was and is to the prejudice and disadvantage of the producers and shippers who
28 sell or buy livestock at said stockyards, contrary to and in violation of Title III of the packers and stockyards act, 1921.

Therefore, notice is hereby given you, and each of you, the said respondents, that you may file an answer to this complaint on or before the sixth day of June, 1925, and that a hearing will be held for the purpose of investigating the matters and things set forth in this complaint before an examiner designated for the purpose, beginning on the sixteenth day of June, 1925, at ten o'clock a. m., at the Federal Building in Oklahoma City, State of Oklahoma, or such other place as may be designated for the purpose by said examiner and continuing from time to time in such place or other places as may be designated by the examiner until such hearing is completed, in which hearing you, and each of you, will have the right to appear and show cause why an order should not be made by the Secretary of Agriculture, requiring you, and each of you, to cease and desist from violating the packers and stockyards act, 1921, and further to show cause why an order should not be made suspending you, and each of you, for a reasonable specified period of time, for the reason and on account of the matters and things set forth in this complaint.

It is ordered that this complaint and notice be served by transmitting to each of the respondents a true copy thereof by registered mail.

In witness whereof the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington, District of Columbia, this 18th day of May, 1925.

W. M. JARDINE,
Secretary of Agriculture.

29 *Exhibit B to complaint*

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

PACKERS AND STOCKYARDS ADMINISTRATION

DOCKET NO. 136

IN RE AMERICAN LIVESTOCK COMMISSION COMPANY AND OTHERS, RESPONDENTS

Answer to complaint

Come now the respondent, American Livestock Commission Company, and all other respondents named in the complaint in the above styled and numbered proceedings upon whom service of notice has been had, and for their answer to the complaint lodged against them, severally deny that on or about the 8th day of September, 1924, or at any other time, they, or any of them, individually or in concert with others, engaged in and used unfair and unjustly discriminatory practices or devices in connection with the buying and selling of live stock in commerce, as defined in the packers and stockyards act of 1921, at the Oklahoma National Stockyards, Oklahoma City, Oklahoma; and deny that respondents, or any of them, have, in the buying and selling of live stock in commerce, either individually or in concert with others, engaged in a course of conduct and done acts for the purpose and with the effect of restraining commerce, in violation of the packers and stockyards act of 1921; and deny that respondents, or any of them, while engaged in carrying on business in connection with the Oklahoma National Stockyards, Oklahoma City, Oklahoma, have refused and refrained from buying live stock from and selling live stock to either the Producers Commis-
30 sion Association or Bollinger and Spencer Livestock Commission Company; and deny that they or any of them have, at any time, refused to and refrained from buying live stock from and selling live stock to the said Producers Commission Association or Bollinger and Spencer Live Stock Commission Company, and that they, or any of them, have unjustly and unfairly discriminated against the market agencies named in the complaint to their prejudice and disadvantage.

The examiner's tentative findings and recommendations to the Secretary were issued on December 9, 1925, and thereafter on the request of counsel for the respondents an oral argument was made before the Secretary of Agriculture on February 18, 1926.

Findings and conclusion

Upon consideration of the record I find and conclude as follows:

34 1. That the respondents, the American Livestock Commission Company; Lewis Barefoot, trading and doing business as the Barefoot Live Stock Commission Company; Cassidy Southwestern Commission Company; Chas. Fuson, trading and doing business as the Fuson Commission Company; E. T. Healy and E. J. Healy, jr., trading and doing business as Healy & Company; Ingram Livestock Commission Company; R. M. Johnson, Wm. H. Laux, and T. A. Campbell, a copartnership doing business and trading under the firm name of Johnson-Laux-Campbell Live Stock Commission Company; Liberty Live Stock Commission Company; Claude Allen, trading and doing business as the Midwest Livestock Commission Company; Oklahoma Livestock Commission Company; Scannell-Slitt Commission Company; and the Stribling Commission Co., are market agencies duly registered as such under the packers and stockyards act, 1921, and are engaged in the business of buying or selling live stock in commerce at the Oklahoma National Stock Yards, Oklahoma City, Oklahoma; that the National Commission Company was a market agency duly registered as such and doing business at the Oklahoma National Stock Yards, Oklahoma City, Oklahoma, but that prior to the date of the hearing the said corporation had been legally dissolved;

2. That the respondents, Ralph Sullivant, C. J. McFarland, J. E. Case, W. J. Goodson, W. H. May, O. J. Jones, Ben Kapp, and Jean Pryor, are dealers and duly registered as such under the packers and stockyards act and are engaged in the business of buying or selling live stock in commerce on their own account or as the agents or employes of the vendors or purchasers at the Oklahoma National Stock Yards, Oklahoma City, Oklahoma;

3. That the Oklahoma National Stock Yards at Oklahoma City, Oklahoma, is a public stockyard market as defined in Title III of the packers and stockyards act, 1921, and said stockyard has been found by the Secretary of Agriculture to be a stockyard as defined in said act, due notice thereof having been given the owner thereof and the public as required by said act;

35 4. That live stock is shipped and transported to said stockyards from various States for sale at said stockyards for slaughter, and a part of said live stock after purchase or sale at said stockyards is shipped out of Oklahoma either as live stock or as meat or meat food products;

5. That it is essential that said stockyards, as well as all stockyards subject to the jurisdiction of the Secretary of Agriculture, maintain and preserve a free, open, and competitive market at said stockyards; and any interference or obstruction of the free flow of commerce in connection with the handling, purchase, or sale of live stock by market agencies or dealers depresses the prices of live stock to the prejudice and disadvantage of the sellers of said live stock at said stockyards and has the effect of restraining trade in interstate commerce;

6. That on or about the 8th day of September, 1924, the above-named respondents individually and in concert engaged in and used unfair and unjustly discriminatory practices and devices in connection with the handling, buying, or selling of live stock in commerce at said stockyards as defined in Title III, section 312, of said act;

7. That the said respondents above named, and each of them, have in the handling, buying, or selling of live stock in commerce at said stockyards individually and in concert engaged in a course of conduct and done acts for the purpose and with the effect of restraining commerce in violation of said act, in this, to wit: That said above-named respondents, and each of them, while freely dealing and engaging in and carrying on the business of buying or selling live stock in commerce at said stockyards between and among themselves have persistently refrained and refused from handling, buying, or selling live stock from the Producers Commission Association, a cooperative market agency, and duly registered and qualified to transact business at said stockyards; and said respondents are continuing to and refusing and refraining from handling or buying
36 live stock from said Producers Commission Association in the usual and ordinary course of business at said stockyards, thereby unjustly and unfairly discriminating against said market agency to their prejudice and disadvantage;

8. That the said respondents above named, and each of them, have, in the handling, buying, or selling in commerce at said stockyards, individually and in concert, engaged in a course of conduct and done acts for the purpose and with the effect of restraining commerce, in violation of said act, in this, to wit: That said above-named respondents, and each of them, while freely dealing and engaging in and carrying on the business of buying or selling live stock in commerce at said stockyards between and among themselves, have persistently refrained and refused from handling, buying, or selling live stock from the Bollinger & Spencer Livestock Commission Company, a market agency duly registered and engaged in the business of handling, buying, or selling live stock at said stockyards, until it ceased to do bunsiness, on or about March 11, 1925, thereby unfairly discriminating against said market agency to its prejudice and disadvantage;

9. While the record discloses certain irregularities on the part of the Oklahoma Producers Commission Association, yet the order of inquiry directed a hearing on alleged violations of the packers and

stockyards act by respondents, and such irregularities as were shown by the record are not material, since they do not justify concerted action on the part of respondents in restraint of trade. The Secretary is still free, however, to take whatever action against the Oklahoma Producers Commission Association he may deem warranted. Under all the circumstances and facts disclosed by the record it is felt that a cease and desist order is an appropriate exercise of the authority conferred by the statute.

Conclusion

10. It is essential to maintain and preserve a free, open, and competitive market to all stockyards subject to the jurisdiction of
37 the Secretary of Agriculture. The public interest requires that all live stock should be handled, purchased, or sold at these stockyards on their merits, irrespective of the ownership thereof or the agency which handles such live stock, whether they are members or non-members of live stock exchanges. There must be no discrimination among members and non-members of exchange or between the so-called "old line" selling agencies and the cooperative marketing associations who are non-members of exchange. It is of the utmost importance that these agencies shall perform their respective functions in such a manner as to afford equal opportunities to all persons who buy or sell live stock at these public stockyards and upon equal terms. This is the manifest purpose of the packers and stockyards act, 1921. Therefore, any combination or concert of action which obstructs or has the effect to obstruct or interfere with the freedom of commerce in the handling, buying, or selling of live stock in commerce at such public stockyards under the jurisdiction of the Secretary of Agriculture is a restraint of trade in commerce and is prejudicial to the owners and producers of live stock, and this is one of the chief evils which the packers and stockyards act, 1921, sought to prevent and remedy;

11. That the evidence sustains the charges made in the notice of inquiry against the following-named respondents: The American Live Stock Commission Company; Lewis Barefoot, trading and doing business as the Barefoot Live Stock Commission Company; Cassidy Southwestern Commission Company; Chas. Fuson, trading and doing business as the Fuson Commission Company; E. T. Healy and E. J. Healy, jr., trading and doing business as Healy & Company; Ingram Live Stock Commission Company; R. M. Johnson, Wm. H. Laux, and T. A. Campbell, a copartnership doing business and trading under the firm name of Johnson-Laux-Campbell Live Stock Commission Company; Liberty Live Stock Commission
38 Company; Claude Allen, trading and doing business as the Midwest Live Stock Commission Company; Oklahoma Live Stock Commission Company; Scannell-Slitt Commission Company; Stribling Commission Company; Ralph Sullivant; C. J. McFarland;

J. E. Case; W. J. Goodson; W. H. May; O. J. Jones; Ben Kapp; and Jean Pryor;

12. That all of the parties respondent were at one time registered and doing business at the Oklahoma National Stock Yards, Oklahoma City, Oklahoma, either as market agencies or dealers. However, many of the respondent dealers had ceased to do business long prior to the beginning of the boycott. Some of the respondents registered as dealers were at the date of the hearing, and for a long time prior thereto, employed by various respondent market agencies or dealers. In a few instances the respondent dealers did not refrain from trading, while in numerous cases no information could be obtained as to the whereabouts of particular respondents and registered letters mailed to them were returned unclaimed. The evidence is insufficient to support the charges against the following-named dealers: H. C. Aldridge, Ed. C. Baldridge, T. O. Bivin, J. S. Bogle, Ed Bohling, B. B. Clark, John Clark, W. E. Dabbs, C. E. Davis, T. J. Driggers, A. A. Hamilton, E. H. Johnson, Bride L. Kendall, D. V. Lackey, W. T. Lobb, V. E. Long, Pat Maloy, jr., R. W. Martin, H. J. McCarron, J. F. McGrath, J. W. O'Quinn, A. G. Pannell, T. J. Pannell, G. F. Patterson, E. G. Ramsey, H. C. Rice, E. C. Ridley, N. M. Scannell, Hurley Slitt, W. P. Spencer, Alex Steel, Fred Welter, Gilbert Wright, Kelly L. Wright, H. T. Wright, Ralph O. Wright, and Roger O. Wright.

Order

It is therefore ordered that the American Livestock Commission Company, Lewis Barefoot, trading and doing business as the Barefoot Live Stock Commission Company; Cassidy Southwestern Commission Company; Chas. Fuson, trading and doing business
39 as the Fuson Commission Company, E. T. Healy, and E. J. Healy, jr., trading and doing business as Healy & Company; Ingram Livestock Commission Company; R. M. Johnson, Wm. H. Laux, and T. A. Campbell, a co-partnership doing business and trading under the firm name of Johnson-Laux-Campbell Live Stock Commission Company; Liberty Live Stock Commission Company; Claude Allen, trading and doing business as the Midwest Live Stock Commission Company; Oklahoma Live Stock Commission Company; Scannell-Slitt Commission Company, and the Stribling Commission Company; Ralph Sullivant, C. J. McFarland; J. E. Cash, W. J. Goodson; W. H. May; O. J. Jones; Benn Kapp and Jean Pryor cease and desist from engaging in and using any unfair or unjustly discriminatory practices or devices in connection with the buying and selling of live stock in commerce as defined in said packers and stockyards act at the Oklahoma National Stock Yards, to the prejudice and disadvantage of the Producers Commission Association and of the Bollinger & Spencer Live Stock Commission Company, at the Oklahoma National Stock Yards at Oklahoma City, Oklahoma, in violation of Title III of said act (1) by failing or

refusing to buy live stock from or sell live stock to said Producers Commission Association and the Bollinger & Spencer Live Stock Commission Company in the ordinary course of business or to enter into any business relations with them with respect thereto, while at the same time engaging in and carrying on business freely among themselves; (2) by combining or agreeing among themselves to refrain from buying live stock from or selling live stock to the Producers Commission Association and the Bollinger & Spencer Live Stock Commission Association; and (3) in any other manner shown by the record.

It is further ordered that the case be dismissed against the following-named parties: National Commission Company (dissolved), a market agency formerly registered under the packers and stockyards act and doing business at the Oklahoma National Stock Yards;
40 and H. C. Aldridge, Ed C. Baldridge, T. O. Bivin, J. S. Bogle, Ed Bohling, B. B. Clark, John Clark, W. E. Dabbs, C. E. Davis, T. J. Driggers, A. A. Hamilton, E. H. Johnson, W. H. Johnston, Brice L. Kendall, D. V. Lackey, W. T. Lobb, V. E. Long, Pat Maloy, jr., R. W. Martin, H. J. McCarron, J. F. McGrath, J. W. O'Quinn, A. G. Pannell, T. J. Pannell, G. F. Patterson, E. G. Ramsey, H. C. Rice, E. C. Ridley, S. M. Scannell, Hurley Slitt, W. P. Spencer, Alex Steel, Fred Welter, Gilbert Wright, Kelly L. Wright, H. T. Wright, Ralph O. Wright, and Roger O. Wright;

Provided, however, that the dismissal of these proceedings against the above-named parties in their capacity as registered traders shall not in any way be construed as a dismissal of the charges against said parties or against any corporation, partner, or partnership with which they are now or were connected and which are registered and doing business as market agencies under the packers and stockyards act, 1921.

This order is to take effect at the termination of five days after receipt by the respondent of a copy hereof, which shall be transmitted by registered mail.

In witness whereof the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington, District of Columbia, this 31st day of March, 1926.

(Signed) W. M. JARDINE,
Secretary of Agriculture.

[File indorsement omitted.]

41 In United States District Court

Answer

Filed June 14, 1926

Comes now the United States of America, defendant in the above-entitled action, and makes answer to the bill of complaint filed by the plaintiffs herein, as follows:

I

Admits that the plaintiffs enumerated in the preamble of the said bill are market agencies and dealers at the Oklahoma National Stockyards, Oklahoma City, Oklahoma, and are duly registered as such with the Secretary of Agriculture, as in said preamble set forth.

II

Admits the allegations contained in Paragraph I of said bill.

III

Alleges that the matters and things set up in Paragraphs II and III of said bill are either conclusions of law or matters of record in this suit and therefore do not require an answer.

IV

Admits the allegations contained in Paragraph IV of said bill.

V

Admits the allegation in Paragraph V of said bill as to the finding and conclusion of the Secretary of Agriculture against these plaintiffs quoted therein, but denies each and every other allegation in said paragraph.

VI

Admits the allegations in Paragraph VI of said bill with reference to the finding and conclusion of said Secretary of Agriculture against these defendants as quoted therein, but denies each and every other allegation of said paragraph.

42 VII

Admits the allegations in Paragraph VII of said bill with reference to the order of the Secretary of Agriculture against these plaintiffs as quoted therein, but as to the remainder of said paragraph says that the matters and things therein set up are conclusions of law and therefore do not require an answer. The United States nevertheless denied that said order of the Secretary, if unreasonable, arbitrary, or oppressive, or an infringement of plaintiffs' rights.

VIII

Denies that that portion of said order of the Secretary numbered 2 is without testimony in the record of hearings to support it, and denies that said portion of said order is arbitrary, unreasonable, oppressive, illegal, or prejudicial to plaintiffs' rights; as to the

remainder of said paragraph, the United States says that the matters and things therein set up are conclusions of law and therefore do not require an answer.

IX

Says that the matters and things set up in Paragraph IX of said bill are conclusions of law and therefore do not require an answer, but nevertheless denies that the portion of said order of the Secretary numbered 3 is unfair, unjust, vague, arbitrary, oppressive, or indefinite, or that the same is unsupported by evidence.

X

Says that the allegations contained in Paragraph X of said bill are conclusions of law and therefore do not require an answer, but nevertheless denies that the evidence upon which said order of the Secretary was based was incompetent, irrelevant, immaterial, or prejudicial.

XI

Says that the allegations set forth in Paragraph XI of said bill as to the creation of business by the Bollinger & Spencer
43 Live Stock Commission Company and the causes thereof, are irrelevant and immaterial and therefore neither admits or denies them. As to the remaining allegations in said paragraph, the United States says that the same are argumentative conclusions of law and fact and therefore do not require an answer.

XII

Says that the allegations contained in paragraph 12 of said bill are conclusions of law and therefore do not require an answer.

XIII

Says that the allegations set forth in the first and second sections of paragraph XIII of said bill are conclusions of law and therefore do not require an answer; that the allegations set forth in the third section of said paragraph are irrelevant and immaterial and therefore neither admits nor denies them; that the allegations set forth in the fourth section of said paragraph are argumentative conclusions of law and fact and therefore do not require an answer, but nevertheless denies that said order of the Secretary is unreasonable, arbitrary, or oppressive, or denies plaintiff's of any of their rights.

XIV

Denies the allegations contained in paragraph XIV of said bill, alleging, however, that these allegations at the end thereof with reference to the effect of the Secretary's order upon plaintiff's rights are conclusions of law and therefore require no answer.

XV

Says that the allegations set forth in Paragraph VX of said bill are conclusions of law and therefore require no answer.

XVI

Answering Paragraph XVI of said bill, the United States says it is without knowledge as to the actual effect of said order of the Secretary upon the business of the plaintiffs, or as to the details of plaintiff's business relations with their customers as therein
44 set forth, or as to the effect which the enforcement of said order will have upon plaintiffs' business standing and reputation; but it says that the allegations of said paragraph are irrelevant and immaterial to the validity of the Secretary's order and to this action, and therefore need be neither admitted nor denied; as to the remainder of said paragraph, it says that the allegations therein contained are conclusions of law and therefore do not require an answer.

XVII

Says that the allegations contained in Paragraph XVII of said bill are conclusions of law and therefore require no answer.

XVIII

Admits only that Jean Pryor had ceased operations as dealer upon the Oklahoma National Stockyards prior to the filing of said complaint by the Secretary of Agriculture, but denies each and every other allegation in said paragraph; nevertheless alleging that the allegations set forth in the last section of said paragraph are conclusions of law and therefore require no answer.

XIX

Admits the allegations contained in Paragraph XIX of said bill as to the penalties to which plaintiffs will be subjected in case of their failure to observe and obey said order of the Secretary of Agriculture; but denies that compliance with said order will cause irreparable damage and loss to the plaintiffs or to any of them, and denies that its issuance, existence, and continuance in force has caused or will cause irreparable injury and damage to the standing, reputation, business integrity, and business of the plaintiffs or any of them. Answering the last section of said Paragraph XIX, the United States says that the allegations therein contained are conclusions of law and therefore require no answer.

Wherefore defendant prays that plaintiff's bill of complaint in this action be dismissed and that the defendant herein be awarded its costs and disbursements in this action.

WILLIAM J. DONOVAN,
Assistant to the Attorney General.
H. B. TEEGARDEN,
Special Assistant to the Attorney General.

45

(File indorsement omitted.)

46 In United States District Court

Argument and submission

(February 24, 1928)

(Before KENYON, circuit judge, and WILLIAMS and COTTERAL, district judges)

On this 24th day of February, 1928, the complainants appear by Fred E. Suits, Esq., and C. E. Hall, Esq., their attorneys, and the defendant by Roy St. Lewis, Esq., United States attorney, and H. B. Teegarden, Esq., special assistant to the Attorney General of the United States. Thereupon, this cause comes on for final hearing, and the complainants introduce evidence and proof and rest, and thereafter the defendant introduces evidence and proof and rests, and the taking of evidence is closed. Arguments of counsel are heard, and said cause is submitted to the court for determination, with leave to complainants to file abstract of evidence and brief within thirty days, and the defendant is given five days thereafter in which to file reply brief.

47 In United States District Court

[Title omitted.]

Stipulation as to evidence

(Filed October 5, 1928)

It is hereby stipulated and agreed by and between the parties in the above-entitled cause, by their counsel of record, that for purposes of an appeal herein to the Supreme Court of the United States the following shall constitute and be considered a true statement of the evidence material to the determination of the issues upon said appeal:

I. Counsel for the United States conceded at the hearing before the district court that the Bolinger and Spencer Livestock Commission Company had, before the hearing before the Secretary of Agriculture, been dissolved and ceased to transact business on the Oklahoma Stockyards, and counsel stated that the United States would not object to the modification of the Secretary's order as prayed by

the plaintiffs, in so far as it relates to the said Bolinger and Spencer Livestock Commission Company, and in so far as it relates to individual acts of the plaintiffs unmotivated by any concert or agreement among them.

48 II. It is agreed by the parties that the Producers Commission Association is organized under and exists by virtue of an act of the State of Oklahoma entitled "Co-operative agricultural associations," approved March 19, 192', being chapter 181, Session Laws of Oklahoma of 1923. Said act was read into the record at the hearing before the Secretary of Agriculture, and it is agreed that the same shall constitute and be considered a part of this record on appeal. Sections 5637 to 5652, inclusive, being Article XIX of chapter 34, Compiled Oklahoma Statutes of 1921, entitled "Co-operative Corporations," were also read into the record at the Secretary's hearing, and it is agreed that the same shall also constitute and be considered a part of this record upon appeal.

III. It is further agreed as a matter of record that plaintiffs' contention that their alleged boycott of the Producers Commission Association was justified by reason of the limitation in the corporate powers of that association imposed by the law under which it was organized was first raised by plaintiffs' counsel during the hearing before the Secretary of Agriculture and later during the oral argument before the Secretary of Agriculture.

IV. That the record contains no evidence as to whether the live stock which the Producers Commission Association bought or sold or attempted to buy and sell upon the Oklahoma City Stockyards was or was not the live stock of its members.

V. That the record contains no evidence as to whether the limitation in the corporate powers of the Producers Commission

49 Association imposed by the law under which it was organized was or was not the reason motivating the plaintiffs' alleged combination to boycott said association, as referred to in the opinion of the district court.

Dated October 4th, 1928.

H. B. Teegarden,
Special Assistant to the Attorney General.
Hall & Thompson,
Fred E. Suits,
Counsel for Plaintiffs.

[File indorsement omitted.]

50 In United States District Court

Final decree

Filed July 27, 1928

The said cause having been tried at a final hearing upon the pleadings and the evidence and duly argued by counsel for the parties, upon consideration thereof, this court finds and concludes

that the order of the Secretary of Agriculture of date May 18, 1925, against the plaintiffs, described in their bill herein, was not justified, for and upon the ground set forth in our opinion filed this date; and it is therefore by the court

Ordered, adjudged, and decreed that the enforcement of said order against the plaintiffs, and each of them, be, and it is hereby, perpetually enjoined.

To the said decree counsel for the defendant at the time excepted and excepts.

July 27, 1928.

WM. S. KENYON,
Circuit Judge.
R. L. WILLIAMS,
District Judge.
JOHN H. COTTERAL,
Circuit Judge, formerly district judge, and assigned to hold district court, Western District of Oklahoma.

[File indorsement omitted.]

51 In United States District Court

Opinion on final hearing

Filed July 28, 1928

(Before KENYON, circuit judge, and WILLIAMS and COTTERAL, district judges)

COTTERAL, *District Judge:*

The plaintiffs sue as "market agencies" and "dealers" for an injunction against the enforcement of an order of the Secretary of Agriculture, made upon findings, after complaint, notice, and a full hearing, at which evidence was taken under Title III of the packers and stockyards act (42 Stat. 159.) By the order they were required to cease and desist individually and by concerted action from engaging in and using unfair and unjustly discriminatory practices or devices in connection with the buying and selling of live stock, as defined in the act, at the Oklahoma City National Stockyards at Oklahoma City, Oklahoma, by failing and refusing to buy live stock from and sell live stock to the Producers Commission Association and the Bollinger & Spencer Live Stock Commission Company.

It appears that the latter company had, before the departmental hearing, been dissolved and ceased to transact business at those yards, and by concession of counsel for the United States the order, so far as it affects that company, should be enjoined. It is further conceded that the order can not be sustained against the individual acts of the plaintiffs.

The Secretary of Agriculture found that the said stockyard was a public stockyard market as defined in Title II of the act; that cer-

tain of the plaintiffs were "market agencies," registered under the act and engaged in buying and selling live stock, and others of them were "dealers," registered and engaged in buying and selling live stock on their own account, at said yard; that it was essential to maintain there a free, open, and competitive live stock market
52 and any interference therewith depressed the prices of live stock to the prejudice and disadvantage of the sellers thereof and restricted interstate commerce.

The Secretary further found that the plaintiffs were engaged individually and in concert in unfair and unjustly discriminatory practices or devices in the handling, buying, or selling of live stock at said yards, as defined in Title III, section 312, of the act, and while freely buying and selling live stock in commerce at said yards among themselves persistently refrained from and refused handling, buying, or selling live stock there from the Producers Commission Association, a cooperative market agency and duly registered and qualified to transact business, and continue to do so, thereby unjustly and unfairly discriminating against the association until it ceases to do business on or about March 11, 1925, to its prejudice and disadvantage.

We shall briefly express our views upon the grounds of complaint against the order which appear to us to merit consideration.

The first of these we notice in that the packers and stockyards act did not prohibit the plaintiffs, assuming they acted in concert, from dealing with whom they pleased. Counsel rely upon the cases of Hopkins vs. U. S., 171 U. S. 578, and Anderson vs. U. S., Id. 604. No claim is made in the bill or otherwise that the transactions did not occur in interstate commerce. And to show those cases were based on different facts and are inapplicable, it is only necessary to refer to the case of Stafford vs. Wallace, 258 O. S. 495, upholding the validity of the act, where it was said, at page 525:

"Again, if the result of the combination of commission men in the Hopkins case had been to impose exorbitant charges on the passage of the live stock through the stockyards from one State to another, the case would have been different, as the court suggests. The
53 effect on interstate commerce in such a case would have been direct. Similarly, in the Anderson case, if the combination of dealers had been directed to collusion with the commission men to secure sales at unduly low prices to the dealers and to double commissions, or to practice any other fraud or oppression calculated to decrease the price received by the shipper and increase the price to the purchaser in the passage of live stock through the stockyards in interstate commerce, this would have been a direct burden on such commerce and within the antitrust act."

The plaintiffs further claim there is no sufficient legal evidence to support the adverse findings of the Secretary. The transcript of the evidence being voluminous, counsel on both sides assumed at the hearing, for the convenience of the court, to point out in their briefs those portions of it deemed to bear on the subject.

The Secretary was authorized to ascertain the facts as a basis for an appropriate order. When a department has that authority, then by general rule its findings of fact upon the evidence taken at a hearing are conclusive, but questions of law are open to review by the courts. The particular jurisdiction of this court over the action of the Secretary of Agriculture is the same as in case of a suit to enjoin an order of the Interstate Commerce Commission. (Sec. 316, packers & stockyards act; sec. 208, Judicial Code.) His findings are prima facie correct; and the pertinent inquiry with regard to the findings of fact is whether they are based on substantial evidence, which is a question of law. (Int. Com. Comm. vs. Union Pac. R. R., 222 U. S. 541; Virg'ian Ry. vs. U. S. 272 U. S. 658.) Conceding to these parties the right to deal at will separately, their acts done in concert, if they amounted to a boycott against lawful trade in live stock by the Producers Commission Association, would take
54 on the form of a conspiracy, and become a public wrong. Eastern States Lumber Ass'n. v. U. S., 234 U. S. 600. Montague vs. Lowry, 193 U. S. 36. Binderup vs. Pathe Exchange, 263 U. S. 291.

We are satisfied there was substantial evidence to support the findings of the Secretary. The acts of the plaintiffs and the circumstances were amply sufficient to show the plaintiffs had combined to boycott the association and make their object effective by their concerted action. The evidence of the combination or conspiracy was circumstantial. But it was not essential to prove a formal or explicit agreement. It might be inferred from the acts that were done. (Eastern States Lumber Ass'n. vs. U. S., supra.) Also, we find there was sufficient legal evidence to support the findings of the Secretary that was not open to the technical objections of the plaintiffs; and the criticisms made upon the credibility of the witnesses and the force of their testimony can be regarded only as raising questions of fact, which are foreclosed by the findings of the Secretary.

But the plaintiffs complain of the order in this case on the ground that the association was not authorized within its corporate powers to buy and sell the livestock at this yard, and hence they were not obligated to deal with or recognize it or subject to this coercive order, respecting the transactions in question. We think their position is well taken and that it must be immaterial on what ground they seek to justify their conduct, so long as they were within their rights.

We may conceive of a cooperative association transacting the business of buying and selling livestock for the mutual interest of its stockholders or members, and as such entitled to register with the Secretary as a "market agency" or "dealer." But we must look
55 to the powers of this association under the Oklahoma State law to determine whether it might engage in such business and thereby be entitled to the benefit of the act of Congress.

It appears that the association was organized under chapter 181, Oklahoma Session Laws, 1923, where its charter powers are defined. It is there provided that any number of persons not less than five,

engaged in the production of agricultural or horticultural products, may act together and organize a cooperative association, not having capital stock and not conducted for profit, for mutual help, in collectively possessing, handling, shipping, and marketing such products of persons so engaged, etc. Various other provisions are added to facilitate the object specified, such as the buying of machinery and supplies, acquiring and disposing of the property of the members, contracting and acting with other cooperative associations, enjoying incidental powers. There are other details, but they need not be enumerated, exception section 11, which reads:

"No association organized hereunder shall handle the agricultural or horticultural product of any nonmember except for storage."

The general rule is that a corporation has only such powers as are conferred by law and other necessarily incident to the proper exercise of its express powers. (Myatt vs. Ponca Land & Loan Co., 14 Okl. 189; 14-A C. J. 252.) All other powers are excluded. (14-A C. J. 269.) It is clear that this association was authorized only to buy and sell livestock of its members. Any other transactions were outside of its express and incidental powers. No testimony has been pointed out as to the transactions of the association, except that its manager and salesman bought and sold livestock at the yard, and none that they sold livestock of the members of the association. It was incumbent on the Government to show its right to engage in these transactions.

56 Where the State legislature has seen fit to thus limit the powers of an organization, the buying or selling of live stock of others by it at the stockyards were acts that were ultra vires, or, more accurately stated, wholly illegal in character. It is to be said that even if the plaintiffs had contracted with this association, and the contracts were executory, they could not be enforced. (2 R. C. L. p. 675; 1 Clark & Marshall, Priv. Corporations, sec. 213.) The plaintiffs therefore not only had no duty to recognize the agents of the association, but it was their absolute right to refrain from dealing with them. The packers and stockyards act does not confer corporate rights or powers upon any corporation, but grants to persons only the privileges and protection there specified, assuming they have the right to engage in the transactions. Its protection is extended to an incorporated company only when acting within the powers derived from its charter, and certainly not if it seeks to engage in dealings forbidden by State law.

The answer to this is that both by the principles of the common law and a State statute declaratory thereof, found in section 5293, Comp. St. 1921, this defense is not available to the plaintiffs. That section is as follows:

"The due incorporation of any company claiming in good faith to be a corporation under this chapter, and doing business as such, or its right to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such de facto corporation

may be a party; but such inquiry may be had and action brought at the suit of the State, in the manner prescribed in civil procedure."

We do not find any such principles that are applicable or that the statute applies to this case. The question does not arise in any suit between those parties. It is not a case where property has
57 been acquired in excess of corporate powers or where the parties have so dealt with each other that one of them is disabled to plead a want of corporate power to act. Instead it is one where the dealing with a corporation has been declined by the plaintiffs. For this reason it is our opinion that the plaintiffs were free to refuse to deal with the association. (See Central Transportation Co. vs. Pullman, 139 U. S. 24; 1 Clark & Marshall, Priv. Corporations, sec. 213. Hummel vs. Warren Steel Casting Co., 4 Fed. (2) 451.)

Not doubting in the least that competitive trading and cooperative marketing are valuable to industry and agriculture, as contended by the able counsel for the Government, our conclusion is that the advantages of the packers and stockyards act were not extended to the Producers Commission Association for the purpose of buying or selling live stock of others, and that the order of the Secretary of Agriculture as to it should not have been made for that reason as a matter of law, and being concededly invalid as to the Bollinger and Spencer Livestock Commission Company, and no other relief being deemed adequate, the enforcement of the order should be enjoined by this court. It will be so decreed in this case.

58 In United States District Court

Concurring opinion

Filed July 28, 1928

WILLIAMS, *District Judge*, concurring:

Section 2, chapter 181, page 309, Session Laws, 1923, amending act of June 14, 1917 (see chap. 34, art. 16, Okla. Compiled Statutes 1921, and Session Laws 1917, sec. 11), under which the Producers Commission Association is organized, relates to cooperative agricultural and horticultural associations organized without any capital stock and not to be conducted for profit. The legislature of 1919 provided for cooperative corporations, with limitations as to capital stock and voting powers of stockholders, to engage in an agricultural, dairy, live stock, irrigation, horticultural, mercantile, manufacturing, mechanical, or industrial business, same to be operated on a cooperative plan (see Session Laws 1919, page 211; Oklahoma Compiled Laws 1921, chapter 34, article 19) and are permitted to deal with and for nonmembers. (See paragraph 3, sec. 5648 Okla. Comp. Laws 1921.) As I construe the opinion prepared by Judge Cotteral had the Producers Commission Association been organized under

the act of 1919 the plaintiff would not be entitled to the injunctive relief which is herein awarded, and I, therefore, concur in his opinion.

59 In United States District Court

Concurring opinion

Filed July 28, 1928

KENYON, *Circuit Judge*, concurring:

I concur in the opinion of Judge Cotteral, as it seems clear that the Producers Commission Association, by virtue of its incorporation under Chap. 181, Okl. Session Laws of 1923, secured authority only to buy and sell the live stock of its members. I am in agreement with the suggestion of Judge Williams in his concurring opinion that had the Producers Association been incorporated under the act of 1919, referred to by him, plaintiff would not be entitled to the relief we are granting.

[File indorsement omitted.]

60 In United States District Court

Petition for appeal

Filed September 24, 1928

Conceiving themselves aggrieved by the final decree and judgment of the United States District Court for the Western District of Oklahoma, made and entered in the above-entitled cause July 28, 1928, the defendants therein hereby appeal from said judgment to the Supreme Court of the United States, and pray that said appeal may be allowed.

In United States District Court

Assignment of errors

Filed September 24, 1928

And the said defendants assign the following errors in the record of proceedings in this case:

1. The court erred in enjoining the enforcement of the order of the Secretary of Agriculture of May 18, 1925, against the plaintiffs herein.

2. The court erred in refusing to dismiss said plaintiffs' bill of complaint as prayed in the defendants' answer.

3. The court erred in enjoining the enforcement of the order of the Secretary of Agriculture of May 18, 1925, against the said plaintiffs, in so far as it concerned their dealings or their refusals to deal with the Producers Commission Association, by agreement or understanding among them.

4. The court erred in holding that the Producers Commission Association was not authorized within its corporate powers to buy and sell live stock upon the Oklahoma National Stockyards at Oklahoma City, Oklahoma.

5. The court erred in holding that, because the Producers Commission Association was not authorized within its corporate powers to buy and sell the live stock of non-members, that it was lawful for these plaintiffs, acting by concert or in agreement, to refuse to deal with said association.

61 6. The court erred in refusing to hold that, for the purpose of determining the validity of the Secretary's order of May 18, 1925, the Producers Commission Association, in buying and selling live stock upon the stockyards at Oklahoma City, Oklahoma, was and is presumed, in the absence of proper showing to the contrary, to be within the proper exercise of its corporate powers.

7. The court erred in holding that the Producers Commission Association, in buying and selling live stock upon the stockyards at Oklahoma City, Oklahoma, or in offering to do so from time to time, as such transactions are shown in the record of proceedings before the Secretary of Agriculture, was acting in excess of its proper corporate powers.

8. The court erred in holding that because the Producers Commission Association was limited by its corporate powers to buying and selling the live stock of its members, it was not entitled to the protection of the packers and stockyards act, 1921, against the unlawful acts of these plaintiffs in refusing and refraining by agreement and concert of action to deal with said association.

9. The court erred in holding that because the advantages of the packers and stockyards act, 1921, were not extended to the Producers Commission Association for the purpose of buying and selling the live stock of non-members, that the order of the Secretary of Agriculture against the plaintiffs herein should not have been made as to said association as a matter of law.

10. The court erred in holding that the plaintiffs were entitled to justify their agreement to boycott the Producers Commission Association on the ground that some or all of the dealing with such association refused by them were in excess of the corporate power of the association; and in refusing to hold that the planitiffs were not entitled so to justify such boycott.

11. The court erred in refusing to hold that the transactions
62 or proposed transactions in which plaintiff refused to deal, and urged others not to deal, with the Producers Commission Association, as shown by the record of proceedings before the Secretary

of Agriculture, were not shown upon such record to be in excess of the proper corporate powers of such association.

12. The court erred in refusing to hold that the acts of the plaintiffs referred to in Assignment No. 11, above, were not shown upon the record to have been actuated in any measure by the belief that the transactions there in question were in excess of the proper corporate powers of the Producers Commission Association.

Prayer for reversal

For which errors the defendants herein pray that the said judgment and decree of the district court, dated July 28, 1928, in the above-entitled cause be reversed and judgment rendered in favor of said defendants.

WILLIAM J. DONOVAN,
The Assistant to the Attorney General.
H. B. TEEGARDEN,
Special Assistant to the Attorney General.

ROY ST. LEWIS,
United States Attorney.

In United States District Court

Order allowing appeal

Filed September 24, 1928

Appeal allowed as prayed, and issuance of citation ordered, returnable within thirty days from the date hereof. Dated September 24th, 1928.

F. E. KENNAMER,
Judge.

[File indorsement omitted.]

63 In United States District Court

[Title omitted.]

Stipulation re transcript of record

Filed October 5, 1928

For purposes of an appeal which has been allowed herein to the Supreme Court of the United States, the clerk is requested to prepare and forward to the clerk of said court a transcript of record on appeal; and it is hereby stipulated and agreed by and between the parties to this cause, by their counsel of record, that said record on appeal shall include the following proceedings:

1. Bill in equity, filed April 14, 1926.
2. Answer by the United States, filed June 14, 1926.

3. Trial and argument, February 24, 1928.
4. Stipulation of evidence, filed October 5th, 1928.
5. Opinion on final hearing, filed July 28, 1928.
6. Final decree, entered July 28, 1928.
7. Petition for appeal, assignment of errors, and order of allowance.
8. Citation on appeal.
9. This designation of record.

H. B. TEEGARDEN,
Special Assistant to the Attorney General.
HALL & THOMPSON,
FRED E. SUITS,
Counsel for Plaintiffs.

[File indorsement omitted.]

In Supreme Court of the United States

Statement of points to be relied upon and designation to print entire record

Filed November 5, 1928

In support of its contention that the district court erred in the particulars pointed out in the assignments of error hereinbefore filed, appellant intends to rely upon the following points:

1. The appellees were not justified, by any limitation in the corporate powers of the Producers Commission Association, in combining to boycott said association by refusing to deal with it.

2. The appellees were not in any case justified, by any limitation in the corporate powers of the Producers Commission Association, in combining to boycott said association with respect to dealings and transactions not in excess of its corporate powers.

The appellant represents that the entire record as filed will be necessary for the consideration of these points.

WILLIAM D. MITCHELL,
Solicitor General.
WILLIAM J. DONOVAN,
The Assistant to the Attorney General.
H. B. TEEGARDEN,
Special Assistant to the Attorney General.

[File indorsement omitted.]

64 [Clerk's certificate to foregoing transcript omitted in printing.]

[Indorsement on cover:] File No. 33822. W. Oklahoma D. C. U. S. Term No. 513. The United States of America, appellant, vs. American Livestock Commission Company; Lewis Barefoot, trading and doing business as the Barefoot Commission Company; Cassidy Southwestern Commission Company et al., etc., et al. Filed October 24, 1928. File No. 33822.

In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 513

UNITED STATES OF AMERICA, APPELLANT

v.

AMERICAN LIVESTOCK COMMISSION COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

STATEMENT OF JURISDICTION

The appellant submits herewith, in compliance with Rule 12, its statement of the basis of this Court's jurisdiction to review on appeal the judgment of the District Court.

A

STATUTORY PROVISIONS

This appeal was prosecuted direct from the District Court under the following statutory provisions:

1. Section 238 (5) of the Judicial Code, Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S.

C., Title 28, sec. 345 (5)). This confirms the right of direct review by this Court of a final decree of a District Court where so provided in section 316, Packers and Stockyards Act, 1921.

2. Section 316, Packers and Stockyards Act of August 15, 1921, c. 64, 42 Stat. 159, 168 (U. S. C., Title 7, sec. 217). This Act makes applicable to the enforcement of the Secretary's orders under that Act, all laws relating to restraining the enforcement of orders of the Interstate Commerce Commission.

3. The District Court Jurisdiction Act of October 22, 1913, c. 32, 38 Stat. 208, 219; see U. S. C. Title 28, sec. 41 (28), 43–48; also U. S. C. Sup. I, Title 28, sec. 47a. This Act confers upon District Courts jurisdiction of suits to enjoin orders of the Interstate Commerce Commission, and provides that appeals from final decrees in such suits may be taken direct to this Court within sixty days after their entry.

B

DATES OF JUDGMENT AND APPLICATION FOR APPEAL

The decree of the District Court enjoining the enforcement of the order of the Secretary of Agriculture was entered July 28, 1928. (R. 50.)[1] The application for the appeal was presented and the appeal allowed on September 24, 1928. (R. 60–62.)

[1] Record references are to the original transcript, which is not yet printed.

C

NATURE OF THE CASE

This suit was brought to enjoin enforcement of an order of the Secretary of Agriculture issued under Title III of the Packers and Stockyards Act, 1921, *supra*, directed against a boycott on the public stockyards at Oklahoma City, Oklahoma. (R. 32–40.) By its final decree the District Court below permanently enjoined the enforcement of the Secretary's order. (R. 50.)

D

CASES SUSTAINING JURISDICTION

Stafford v. *Wallace*, 258 U. S. 495.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

WILLIAM J. DONOVAN,
The Assistant to the Attorney General.

H. B. TEEGARDEN,
Special Assistant to the Attorney General.

NOVEMBER, 1928.